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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC SCOTT MICKO

Appeal 2007-3957
Application 10/600,314
Technology Center 2800

Decided: April 15, 2008

Before JAMES D. THOMAS, KENNETH W. HAIRSTON,
and ST. JOHN COURTENAY III, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under appeal 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 9. We have jurisdiction under 35 U.S.C. § 6(b).

We Reverse.

As best representative of the disclosed and claimed invention,
independent claim 1 is reproduced below:

1. A passive infrared (IR) motion sensor, comprising:

at least a first IR detector outputting a first signal having a first frequency when a moving object passes in a detection volume of the first detector:

at least a second IR detector outputting a second signal having a second frequency when the moving object passes in a detection volume of the second detector, the second frequency being different than the first; and

a processing system receiving the first and second signals and at least partially based on the first and second signals, outputting a detection signal representative of the moving object, wherein the detectors have the same size as each other, the first detector being provided with a first optics defining a first focal length and the second detector being provided with a second optics defining a second focal length different than the first focal length, the second detector not having an optics of the same focal length as the first optics.

The following references are relied on by the Examiner:

Schwarz	US 3,829,693	Aug. 13, 1974
Sugimoto	US 5,461,231	Oct. 24, 1995

All claims on appeal, claims 1 through 9, stand rejected under
35 U.S.C. § 103. As evidence of obviousness, the Examiner relies upon
Sugimoto in view of Schwarz.

Rather than repeat verbatim the positions of the Appellant and the Examiner, reference is made to the Brief and Reply Brief for Appellant's positions, and to the Answer for the Examiner's positions.

OPINION

Generally, for the reasons set forth by Appellant in the Brief and Reply Brief, we reverse the rejection of claims 1 through 9 under 35 U.S.C. § 103.

Independent claim 1 requires a first and second detector, where the first detector is provided with a first optics having first focal length and where the second detector has second optics defining a second focal length that is different from the first focal length. Additionally, and significantly, the claim further requires “the second detector not having an optics of the same focal length as the first optics.” Independent claim 4 has similar limitations requiring two detectors having optics of different focal lengths “such that the first detector has no optics of the same focal length as any optics of the second detector.” Correspondingly, two detectors are also recited in independent claim 8, where an optics system defines a first focal length associated with a first detector and “a second focal length associated with the second detector but not with the first detector, the first and second focal lengths not being equal to each other.” These negative limitations from independent claims 1, 4, and 8 exclude any one detector having dual, different focal lengths where any one of which is in the other detector.

From our understanding of the Examiner’s statement of the rejection at pages 3 and 4 of the Answer followed by the responsive arguments at pages 5 and 6 of the Answer, the Examiner appears not to have come to

grips with these negative limitations. Appellant's positions at pages 4 and 5 of the principal Brief and pages 1 and 2 of the Reply Brief do not contest the proper combinability of the teachings of the respective references to Sugimoto and Schwarz.

We agree with Appellant's basic view that combining the teachings of Schwarz with Sugimoto would not result in the present claims but would merely provide two detectors that are identical, each one of which has optics providing two different focal lengths, but none of which that has a focal length that is absent from the optics of the other detector, as set forth in different words in each of independent claims 1, 4, and 8.

The Examiner has not set forth any rationale considering the teachings of both references that would have given rise to a conclusion that the quoted negative limitations from each independent claim on appeal are met. In fact, according to the Examiner's reasoning and our understanding of all that the combined teachings of both references would have provided, they would not have yielded any single detector not having optics having the same focal length as in the other detector.

In view of the foregoing, since we do not sustain the rejection of each independent claim 1, 4, and 8, we also reverse the rejection of their respective dependent claims. Therefore, the decision of the Examiner is reversed.

REVERSED

pgc

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